

Question from Senator Boyce:

A number of submitters have suggested adding extra members with different skills set, e.g. psychological/behavioural change skills, to the Pre-vetting and Adjudicator panels. Please comment.

Response:

Behaviour change, as an assessable outcome, sits beyond the scope of the ABAC panels whose roles are expressly designed to consider an advertisement's compliance with the provisions of the ABAC code using the test of a 'reasonable person' – not the views of a narrowly qualified expert. This will always be a subjective assessment of an advertisement against the Code, and if it is to reflect community opinions (as expressed by the standards) there is a need to avoid the narrowing of these judgements to an extremely small subsection of the community, which is the natural outcome in the question.

Question from Senator Moore:

Please comment on an article referred to during the hearing. The article is Jones S, Hall D, Munro G. 'How effective is the regulatory code for alcohol advertising in Australia?' *Drug and Alcohol Review* 2008; 27: 29-38.

Response:

The article is based on a study of a period of time (May 2004 to March 2005) when the operation of the revised code was undergoing its implementation phase (the ABAC Scheme has progressed substantially since then). The government representative on the ABAC Management Committee took up that role from August 2004 and the two government-nominated health experts on the Adjudication Panel did not take up their posts until October 2004 and 1 June 2007, respectively.

The article refers to an out-of-date version of the ABAC code that does not include three key clauses – (f), (g) and (h).

The authors are incorrect in their description of the ABAC Scheme as 'self-regulatory'. The ABAC Scheme is accurately described as a 'quasi-regulatory' scheme as it includes representation of the Australian government(s) on the management committee, and two of the five adjudicators are nominated by the Ministerial Council on Drug Strategy (MCDS).

The authors refer to a "*regulatory board*" not adequately distinguishing between an advertisement that receives one complaint and an advertisement that receives 100 complaints. If the authors are referring to the ABAC Management Committee then such a suggestion is misguided as this body does not deal with complaints.

The article notes that the effectiveness of the regulatory system has been questioned in recent years; the only two references cited to support this are also written by the lead author, Dr. Sandra Jones. No other article in any academic journal also

questioning Australian alcohol advertising regulation is cited, and the cited calls for the system to be reformed are limited to two articles in an advertising trade magazine, both from 2003. Hence, claims questioning the efficacy of the ABAC Scheme must be tempered by the paucity of supporting evidence.

The article describes, but does not acknowledge, instances of the ABAC scheme operating as intended. For example, the authors draw a conclusion that the regulatory system failed due to the voluntary withdrawal of two advertisements following a high number of complaints. An alternative, and reasonable, conclusion would be that the system worked well, in that complaints led to the quick removal of the advertisements prior to the adjudication process being necessary.

In response to the authors' concern that there is no legally enforceable obligation to remove advertising, it must be noted that there has been only *one* instance (Bondi Blond) where an advertisement was not quickly withdrawn or modified upon the adjudication that it was in breach of the Code.

ABAC processes, unlike the study which seeks to replicate these, are open and transparent. The ABAC Adjudication Panel consists of a Professor of law (and former Attorney General), a Professor of Public Health, and a member with a market research background. The panel within this study, however, is an anonymous group of academics selectively chosen by the authors. Further, when each of the examples is put before the panel, it is with the starting assumption that they have been subject to complaint; in many cases by the authors of the study themselves. Finally, the study itself warns of a narrow range of skills creating bias – as a function of the judges' academic backgrounds. After all, the Code, as a reflection of community opinion, depends on a 'reasonable person' test, not the narrower 'concerned academic' test. We believe that the ABAC model is an even more balanced model by including a Professor of law and avoids the trap of narrowness leading to bias through membership of Professor Lavarch.